

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HP TUNERS, LLC, a Nevada limited liability company,)	No. 3:17-cv-05760 BHS
)	
Plaintiff,)	DEFENDANTS' ANSWER TO
)	COMPLAINT FOR INJUNCTIVE
vs.)	RELIEF AND DAMAGES
)	
)	JURY TRIAL DEMANDED
KEVIN SYKES-BONNETT and SYKED)	
ECU TUNING INCORPORATED, a)	
Washington corporation,)	
)	
Defendants.)	

Defendants Kevin Sykes-Bonnett and Syked ECU Tuning, Inc. (collectively “Syked Tuning”) state by way of answer and affirmative defenses to Plaintiff’s Complaint for Injunctive Relief and Damages (“Complaint”) as follows.

NATURE OF THE ACTION

1. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.
2. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.
3. Denied.
4. Defendants admit only that the Complaint purports to allege the enumerated violations. Defendants deny that any such violations occurred or that the allegations have any merit.

PARTIES

5. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

6. Admitted.

JURISDICTION AND VENUE

7. Admitted that this Court has jurisdiction. Denied that any claims have any merit.

8. Admitted that this Court has jurisdiction. Denied that any claims have any merit.

9. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

BACKGROUND FACTS

10. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

11. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

12. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

13. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

14. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

15. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

16. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

17. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

1 18. Defendants are without sufficient knowledge of the facts alleged in this paragraph
2 and, therefore, deny on at least that basis.

3 19. Defendants are without sufficient knowledge of the facts alleged in this paragraph
4 and, therefore, deny on at least that basis.

5 20. Defendants are without sufficient knowledge of the facts alleged in this paragraph
6 and, therefore, deny on at least that basis.

7 21. Defendants are without sufficient knowledge of the facts alleged in this paragraph
8 and, therefore, deny on at least that basis.

9 22. Defendants are without sufficient knowledge of the facts alleged in this paragraph
10 and, therefore, deny on at least that basis.

11 23. Defendants are without sufficient knowledge of the facts alleged in this paragraph
12 and, therefore, deny on at least that basis.

13 24. Admitted.

14 25. Denied.

15 26. Defendants are without sufficient knowledge of the facts alleged in this paragraph
16 and, therefore, deny on at least that basis.

17 27. Denied that Defendants provided anything inappropriate to Eric Brooks, or
18 otherwise violated any provision of any EULA.

19 28. Denied.

20 29. Denied.

21 30. Denied.

22 31. Denied.

23 32. This paragraph misquotes and mischaracterizes any communication between
24 Defendants and Eric Brooks. On that basis, this paragraph is denied.

25 33. Admitted that Plaintiff wrongfully withheld a large number of credits from
26 Defendants which were owed by Plaintiff.
27

1 34. Admitted only that Plaintiff ultimately provided the wrongfully withheld credits
2 after much prompting by Defendants.

3 35. Admitted.

4 36. Admitted.

5 37. Defendants are without sufficient knowledge of the facts alleged in this paragraph
6 and, therefore, deny on at least that basis.

7 38. Defendants deny the allegations of this paragraph on the basis that any truthful
8 facts are mischaracterized so as to imply other facts which are not true.

9 39. Denied.

10 40. Defendants deny the allegations of this paragraph on the basis that any truthful
11 facts are mischaracterized so as to imply other facts which are not true.

12 41. Defendants deny the allegations of this paragraph on the basis that any truthful
13 facts are mischaracterized so as to imply other facts which are not true.

14 42. Admitted.

15 43. Admitted.

16 44. Defendants are without sufficient knowledge of the facts alleged in this paragraph
17 and, therefore, deny on at least that basis.

18 45. Denied.

19 46. Defendants are without sufficient knowledge of the facts alleged in this paragraph
20 and, therefore, deny on at least that basis.

21 47. Defendants are without sufficient knowledge of the facts alleged in this paragraph
22 and, therefore, deny on at least that basis.

23 48. Denied.

24 49. Defendants are without sufficient knowledge of the facts alleged in this paragraph
25 and, therefore, deny on at least that basis.

26 50. Defendants are without sufficient knowledge of the facts alleged in this paragraph
27 and, therefore, deny on at least that basis.

1 51. Defendants are without sufficient knowledge of the facts alleged in this paragraph
2 and, therefore, deny on at least that basis.

3 52. Defendants are without sufficient knowledge of the facts alleged in this paragraph
4 and, therefore, deny on at least that basis.

5 53. Defendants are without sufficient knowledge of the facts alleged in this paragraph
6 and, therefore, deny on at least that basis.

7 54. Defendants are without sufficient knowledge of the facts alleged in this paragraph
8 and, therefore, deny on at least that basis.

9 55. Defendants are without sufficient knowledge of the facts alleged in this paragraph
10 and, therefore, deny on at least that basis.

11 56. Defendants are without sufficient knowledge of the facts alleged in this paragraph
12 and, therefore, deny on at least that basis.

13 57. Defendants are without sufficient knowledge of the facts alleged in this paragraph
14 and, therefore, deny on at least that basis.

15 58. Defendants are without sufficient knowledge of the facts alleged in this paragraph
16 and, therefore, deny on at least that basis.

17 59. Defendants are without sufficient knowledge of the facts alleged in this paragraph
18 and, therefore, deny on at least that basis.

19 60. Defendants are without sufficient knowledge of the facts alleged in this paragraph
20 and, therefore, deny on at least that basis.

21 61. Defendants are without sufficient knowledge of the facts alleged in this paragraph
22 and, therefore, deny on at least that basis.

23 62. Denied.

24 63. Defendants are without sufficient knowledge of the facts alleged in this paragraph
25 and, therefore, deny on at least that basis.

26 64. Denied.

27 65. Denied.

66. Denied as to Defendants. Defendants have no knowledge of the remaining allegations in this paragraph and, therefore, deny on at least that basis.

67. Denied.

68. Denied.

69. Denied.

70. Denied.

71. Denied.

72. Denied.

COUNT I

VIOLATION OF COMPUTER FRAUD AND ABUSE ACT, 18 U.S.C. §1030

73. Syked Tuning incorporates by reference its answers to the allegations set forth in the Paragraphs above as if fully set forth herein.

74. Denied.

75. Denied.

76. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

77. Denied.

78. Denied.

79. Denied.

80. Denied.

81. Denied.

82. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

83. Denied that any compliance is or was necessary as Defendants have not committed any of the wrongful acts alleged in the Complaint.

84. Denied.

85. Denied that Defendants have caused any harm to Plaintiff.

COUNT II

VIOLATION OF THE DEFEND THE TRADE SECRETS ACT, 18 U.S.C. § 1836

WASHINGTON UNIFORM TRADE SECRET ACT, RCW 19.108

86. Syked Tuning incorporates by reference its answers to the allegations set forth in the Paragraphs above as if fully set forth herein.

87. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

88. Denied.

89. Denied.

90. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

91. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

92. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

93. Denied.

94. Denied.

95. Denied.

96. Denied.

97. Denied.

98. Denied.

99. Denied.

100. Denied.

COUNT III

VIOLATION OF THE WASHINGTON UNIFORM TRADE SECRET ACT, RCW 19.108

101. Syked Tuning incorporates by reference its answers to the allegations set forth in the Paragraphs above as if fully set forth herein.

1 102. Defendants are without sufficient knowledge of the facts alleged in this paragraph
2 and, therefore, deny on at least that basis.

3 103. Denied.

4 104. Denied.

5 105. Defendants are without sufficient knowledge of the facts alleged in this paragraph
6 and, therefore, deny on at least that basis.

7 106. Defendants are without sufficient knowledge of the facts alleged in this paragraph
8 and, therefore, deny on at least that basis.

9 107. Defendants are without sufficient knowledge of the facts alleged in this paragraph
10 and, therefore, deny on at least that basis.

11 108. Denied.

12 109. Denied.

13 110. Denied.

14 111. Denied.

15 112. Denied.

16 113. Denied.

17 114. Denied.

18 115. Denied.

19 **COUNT IV**

20 **VIOLATION OF THE ILLINOIS TRADE SECRETS ACT, 765 ILCS 1065/1, ET. SEQ.**

21 116. Syked Tuning incorporates by reference its answers to the allegations set forth in
22 the Paragraphs above as if fully set forth herein.

23 117. Defendants are without sufficient knowledge of the facts alleged in this paragraph
24 and, therefore, deny on at least that basis.

25 118. Denied.

26 119. Denied.

1 120. Defendants are without sufficient knowledge of the facts alleged in this paragraph
2 and, therefore, deny on at least that basis.

3 121. Defendants are without sufficient knowledge of the facts alleged in this paragraph
4 and, therefore, deny on at least that basis.

5 122. Defendants are without sufficient knowledge of the facts alleged in this paragraph
6 and, therefore, deny on at least that basis.

7 123. Denied.

8 124. Denied.

9 125. Denied.

10 126. Denied.

11 127. Denied.

12 128. Denied.

13 129. Denied.

14 130. Denied.

15 **COUNT V**

16 **UNFAIR COMPETITION UNDER THE**

17 **WASHINGTON CONSUMER PROTECTION ACT, RCW 19.86.020**

18 131. Syked Tuning incorporates by reference its answers to the allegations set forth in
19 the Paragraphs above as if fully set forth herein.

20 132. Denied.

21 133. Denied.

22 134. Denied.

23 135. Denied.

24 136. Denied.

COUNT VI

**UNFAIR COMPETITION UNDER THE ILLINOIS CONSUMER FRAUD AND
DECEPTIVE BUSINESS PRACTICES ACT, 815 ILCS 505/1 ET. SEQ.**

137. Syked Tuning incorporates by reference its answers to the allegations set forth in the Paragraphs above as if fully set forth herein.

138. Denied.

139. Denied.

140. Denied.

141. Denied.

142. Denied.

COUNT VII

BREACH OF CONTRACT

143. Syked Tuning incorporates by reference its answers to the allegations set forth in the Paragraphs above as if fully set forth herein.

144. Denied.

145. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

146. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

147. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

148. Denied.

149. Denied.

150. Denied.

COUNT VIII

TORTIOUS INTEFERENCE WITH PROSPECTIVE

CONTRACTUAL OR ECONOMIC RELATIONS

151. Syked Tuning incorporates by reference its answers to the allegations set forth in the Paragraphs above as if fully set forth herein.

152. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

153. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

154. Denied.

155. Denied.

156. Denied.

157. Denied.

AFFIRMATIVE DEFENSES

Syked Tuning incorporates by reference the foregoing paragraphs in their entirety. Syked Tuning hereby asserts the following affirmative defenses and reserves the right to assert, in the future, such additional defenses as may become available or apparent during discovery or through other pretrial proceedings. The assertion of any defense as an affirmative defense herein is not, and is not intended as, an admission that defendants have the burden of proof on any such defense or on any related element of Plaintiff's claims.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because they fail to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of nominative fair use.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of acquiescence.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because the acts complained of by Plaintiff are acts of third parties and not of Defendants, for which Defendants are not responsible.

NINTH AFFIRMATIVE DEFENSE

To the extent that Defendants may be found liable under any legal theory, any amounts Defendants may owe must be limited or reduced by contribution, setoff, indemnification, apportionment, or other relief.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because of its failure to mitigate damages.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because it failed to join one or more indispensable parties to this action.

Syked Tuning asserts these affirmative defenses in order to preserve its right to assert them at trial, to give Plaintiff notice of its intention to assert these defenses, and to avoid waiver of any defenses. Syked Tuning reserves its right to amend or supplement its affirmative defenses in the event additional information is obtained, through discovery or otherwise, that indicates the applicability of additional affirmative defenses.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Syked Tuning demands a trial by jury of this action.

PRAYER FOR RELIEF

WHEREFORE, Defendants Kevin Sykes-Bonnett and Syked ECU Tuning, Inc. respectfully request the following relief:

- A. Dismissal with prejudice of the claims asserted against Kevin Sykes-Bonnett and Syked ECU Tuning, Inc.;
- B. Attorneys' fees and costs; and
- C. Any other relief this Court deems just and equitable.

DATED: October 19, 2017

LANE POWELL PC

By s/John E. Whitaker

Gregory F. Wesner, WSBA No. 30241
wesnerg@lanepowell.com
John E. Whitaker, WSBA No. 28868
whitakerj@lanepowell.com
1420 Fifth Avenue, Suite 4200
P.O. Box 91302
Seattle, WA 98111-9402
Telephone: 206-223-7000
Facsimile: 206-223-7107

Attorneys for Defendants Kevin Sykes-Bonnett and Syked ECU Tuning Incorporated

CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2017 I electronically filed the above with the Clerk of the Court using the CM/ECF system. In accordance with their ECF registration agreement and the Court's ruling, the Clerk of the Court will send email notification of such filing to the following persons:

Attorneys for Plaintiff HP TUNERS, LLC

Stephen G. Leatham, WSBA No. 15572
Heurlin, Potter, Jahn, Leatham, Holtmann &
Stoker, P.S.

211 E. McLoughlin Boulevard, Suite 100
Vancouver, WA 98663
Phone: (360) 750-7547
Facsimile: (360) 750-7548
Email: sgl@hpl-law.com

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by **Overnight Delivery**

Attorneys for Plaintiff HP TUNERS, LLC

Andrew P. Bleiman (*pro hac vice* admitted)
Marks & Klein
1363 Shermer Road, Suite 318
Northbrook, IL 60062
Phone: (312) 206-5162
Email: andrew@marksklein.com

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Executed on October 19, 2017, at Seattle, Washington.

s/Kathi Milner

Kathi Milner, Legal Assistant